No. 72-1470

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

BOB JONES UNIVERSITY, PETITIONER,

versus

GEORGE P. SHULTZ, SECRETARY OF THE TREASURY OF THE UNITED STATES, AND DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The opinion of the district court (A., 114)[1] is reported at 341 F. Supp. 277. The opinion of the court of appeals (A., 132) is reported at 472 F. (2d) 903. The opinion of the court of appeals denying rehearing (A., 150) is reported at 476 F. (2d) 259.

JURISDICTION

The opinion of the court of appeals was decided on January 19, 1973. The court of appeals denied rehearing on March 21, 1973. The petition for a writ of certiorari was docketed on April 30, 1973, and granted on October 9, 1973. The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

[1] "A.," references are to the separately bound joint appendix.

QUESTIONS PRESENTED

I. DO FEDERAL COURTS HAVE JURISDICTION TO GRANT INJUNCTIVE RELIEF PREVENTING THE WITHDRAWAL OF THE TAX EXEMPT STATUS OF RELIGIONS AND EDUCATIONAL ORGANIZATIONS?

A. Does the Anti-Injunction Statute, 26 U. S. C. 7421 or the exception in the Federal Declaratory Judgment Act, 28 U. S. C. 2201, deprive the Federal Courts of jurisdiction to enjoin the revocation of the tax exempt status of Petitioner where (a) the action sought to be enjoined would result in irreparable injury to Petitioner; (b) Petitioner has no remedy at law and (c) Petitioner has asserted substantial statutory and constitutional questions concerning the legality of the threatened revocation?

B. Are the Anti-Injunction Statute, 26 U. S. C. § 7421 and the exceptions in the Federal Declaratory Judgment Act, 28 U. S. C. § 2201 unconstitutional as applied by the Court of Appeals below in that they would deprive Petitioner of Fifth Amendment due process rights to be heard by an impartial tribunal prior to the infliction of irreparable harm for which there is no remedy at law?

C. Did the Court of Appeals misapply the exception to the applications of the Anti-Injunction Statute enunciated by this Court in *Enochs v. Williams Packing Co.*, 370 U. S. 1, and *Miller v. Standard Nut Margarine Co.*, 284 U. S. 498?

D. Does this case involve a suit to restrain the assessment or collection of a tax so as to trigger the provisions of the Anti-Injunction Statute?

E. Do Federal Courts have inherent jurisdiction under the Constitution to grant injunctive relief against treasury officials where a *prima facie* showing has been made of irreparable injury and of illegal and unconstitutional threatened action?

II. IS THE REVOCATION OF THE UNIVERSITY'S TAX EXEMPT STATUS SOLELY BECAUSE OF ITS RELIGIOUS BELIEFS AS EXPRESSED IN ITS ADMISSIONS POLICY ILLEGAL OR UNCONSTITUTIONAL?

A. Is the threatened revocation of the University's tax exempt status unlawful and contrary to the clear and unambiguous provisions of the Internal Revenue Code?

B. Is the threatened revocation of the University's tax exempt status unlawful and beyond the delegated powers of treasury officials?

C. Is the threatened revocation of the University's tax exempt status in violation of the First Amendment to the Constitution in that it would deprive the University of its right to the free exercise of its religious beliefs and would promote, benefit and establish religion?

D. Is the threatened revocation of the University's tax exempt status in violation of the Fifth Amendment to the Constitution in that it would deny the University due process and equal protection of the law?

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

Article I, Section 1 of the Constitution of the United States provides in pertinent part as follows:

> "All legislative powers herein granted shall be vested in a Congress of the United States. . . ."

The First Amendment to the Constitution of the United States provides in pertinent part as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . or the right of the people peacefully to assemble. . . ."

The Fifth Amendment to the Constitution of the United States provides in pertinent part as follows:

> "No person shall . . . be deprived of life, liberty or property without due process of law. . . ."

Section 501 of the Internal Revenue Code, 26 U. S. C. § 501 provides in pertinent part as follows:

> "(a) Exemption from taxation.—An organization described in sub-section (c) . . . shall be exempt from taxation under this subtitle. . . .
>
> • • •
>
> (c) List of exempt organizations.—The following organizations are referred to in sub-section (a):
>
> • • •
>
> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, . . . or educational purposes. . . ."

Section 170 of the Internal Revenue Code, 26 U. S. C. § 170 provides in pertinent part as follows:

> "(a) Allowance of deduction.—
>
> (1) General Rule.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowed as a deduction only if verified under regulations prescribed by the Secretary or his delegate.
>
> • • •
>
> (c) Charitable Contribution, defined.—
>
> For purposes of this Section, the term 'charitable contribution' means a contribution or gift to or for the use of—
>
> (2) A corporation, trust or community chest, fund, or foundation—
>
> • • •
>
> (B) Organized and operated exclusively for religious, charitable . . . or educational purposes. . . ."

Section 7421 of the Internal Revenue Code, 26 U. S. C. § 7421 provides in pertinent part as follows:

> "(a) Tax.— . . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is a person against whom such tax was assessed."

The Federal Declaratory Judgment Act, 28 U. S. C. § 2201, provides in pertinent part as follows:

> "In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

28 U. S. C. § 1331 provides as follows:

> "(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and cost, and arises under the Constitution, laws or treaties of the United States."

28 U. S. C. § 1340 provides in pertinent part as follows:

> "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue. . . ."

28 U. S. C. § 1361 provides as follows:

> "The district courts shall have original jurisdiction of any action in the nature of *mandamus* to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

Internal Revenue Regulation, Section 1.501(c) (3)—1, 26 C. F. R. 1.501(c) (3) provides in pertinent part as follows:

> "(d) **Exempt purposes**—(1) **In General.** (i) an organization may be exempt as an organization de-

fined in Section 501(c) (3) if it is organized and operated exclusively for one or more of the following purposes:

(a) religious, . . .

(f) educational, . . .

(3) **Educational defined**—(i) **In General.** The term 'educational' as used in Section 501 (c) (3), relates to—

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities: or

(b) The instruction of the public on subjects usefull to the individual and beneficial to the community.

An organization may be educational even though it advocates the particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(ii) **Examples of Educational Organization.** The following are examples of organizations which if they otherwise meet the requirements of this section are educational:

Example (1). An organization such as a primary or secondary school, a college, or a professional or trade school which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on."

STATEMENT

Bob Jones University was organized and continues to exist as a fundamentalistic religious organization which has chosen the field of education as the vehicle through which to teach and promulgate its religious beliefs (A., 9). The University's Charter and Creed reflect its deeply religious nature and purpose:

> The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures; combatting all atheistic, agnostic, pagan, and so-called scientific adulterations of the Gospel; unqualifiedly affirming and teaching the inspiration of the Bible (both the Old and the New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; his identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God (A., 15).

The University enrolls 4,500 students at the college level and employs a faculty and staff of 650 (A., 17). It refuses to accept funds or grants from any government, federal, state or local, because it believes such acceptance would cause the surrender of its religious principles and infringe upon its right to operate the school in harmony with such principles (A., 18).

The University's admissions policy has been since its inception and continues to the present to be controlled by its religious beliefs (A., 18). Not everyone is acceptable to the institution as a student. The University's admissions

policy requires careful screening to determine whether or not a prospective student qualifies for admission from the standpoint of the prospect's religious background and beliefs. The faculty is selected under a similarly careful screening process. While at the University, the students and faculty continue under the scrutiny of the University's administration and those no longer conforming to the University's teachings and beliefs are subject to expulsion (A., 17). Campus life is permeated by religious instruction and orientation (A., 17).

All University activities, including classroom instruction, are begun and ended with prayer; all students are required to attend daily chapel services; all students are required to take courses in Religion (A., 17).

As a part of the University's admissions policy and as an expression of its belief that God intended the various races of men to live separate and apart, the University adopted and has maintained throughout its more than 40 years of existence an admissions policy which prohibits admission of blacks.[2]

During 1970, the Internal Revenue Service advised the University that its tax exempt status and advance assurance of deductibility of contributions to the University would be revoked unless the University compromised its religious beliefs and adopted a nondiscriminatory admissions policy. Efforts to have the government withdraw its threatened action proved useless and the University was informed that the revocation action would take place in view of the University's refusal to accede to the demands to change its admissions policy.

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[2] The University has admitted a married black student (A., 65). This is entirely consistent with its conviction that intermarriage of the races is forbidden by biblical principles. A married black student does not constitute a threat to the basis for the University's beliefs and admissions policy.

If revocation procedures are followed, the first act of the government would be to withdraw and revoke the University's advance assurance of deductibility of contribution. This action would be taken immediately, following which certain administrative procedures would be employed (A., 53-56). The revocation of the advance assurance ruling would cause immediate and irreparable harm to the University, as found by the district court (A., 118) and admitted by the circuit court (A., 136). The record is replete and uncontroverted that contributions from individual donors and matching grants from various foundations are the financial lifeblood of the University and the revocation of the advance assurance ruling would substantially curtail this financial sustenance (A., 65, 66). There is no way this depletion could be restored to the University even though it ultimately prevailed in the courts. It follows as a natural consequence that the financial structure of the University would be seriously jeopardized, but more importantly that its students currently enrolled, in many instances, would have their educational process terminated, interrupted and hindered. Moreover, prospective students would be denied an education of their choosing because of the increased tuition fees necessitated by the depletion of financial resources in the form of contributions. The University's faculty would be similarly financially impaired and undoubtedly many of the faculty members would have to seek other places of employment (A., 10, 11). The effect upon the University, its faculty, its students and prospective students and community would be disastrously and irreparably damaged by the threatened action of the government.

SUMMARY OF ARGUMENT

Exempt organizations such as the University are not the ordinary "taxpayer" from whom injunctive relief has been withheld by the Anti-Injunction Statute. Revocation of the tax exempt status and particularly withdrawal of advanced assurance of deductibility of contributions inevitably results in irreparable, if not fatal, harm to the exempt organization. An adequate judicial remedy is necessary prior to the withdrawal of advanced assurance of deductibility of contributions with its attendant loss of contributions. The Anti-Injunction Statute relied upon by the government is not literally applicable to the University as to date there has been no attempt at the assessment or collection of any tax.

The procedures offered by the government within the Internal Revenue Service hardly constitute a remedy at all. Certainly, the Internal Revenue Service is ill-qualified to act impartially when the very rule it has promulgated is under attack. Furthermore, expertise in the taxing statute is not required to resolve the substantial constitutional questions asserted by the University here. Exempt organizations are entitled to judicial scrutiny before their advanced assurance is withdrawn and their very lifeblood, contributions, is taken away.

The reliance of the Court below upon *Green, infra,* was ill-placed in that it did not consider the far-reaching constitutional questions presented by the University. In particular, reliance upon *Green* in the context of *Nut Margarine, infra,* and *Williams Packing, infra,* places an impossible burden upon an exempt organization. In both *Nut Margarine* and *Williams Packing,* remedies were available to the taxpayer while the exempt organization is afforded no remedy at all. The usual avenues of redress through refund litigation in the district court or a tax court determination

are of little use to an exempt organization suffering from a contribution drought occasioned by withdrawal of advanced assurance.

The case at bar is in essence not a tax case at all. Without expending any sums and without making any tax returns or bookkeeping entries, the University may avoid this controversy entirely. All that is required is the relinquishment of basic religious beliefs and practices long held by the University through a change in its admissions policy and the government will admittedly cease its attempts to tax the University. The exaction demanded by Treasury officials here is only in the guise of a tax.

In cases where fundamental constitutional rights are in jeopardy, federal courts have always been quick to supply the necessary remedies. Jurisdiction in such cases is inherent in the federal courts, for otherwise constitutional guaranties would have little meaning. There is nothing sacrosanct about the taxing laws or the Treasury Department licensing unconstitutional action. Furthermore, the University does not seek to preempt discretionary powers of federal officers. The University attacks not the applicability of the government's position to it, but rather the validity of that position under the laws and Constitution of the United States.

The University has enjoyed tax exempt status since its formation more than forty years ago. During that period neither the religious beliefs and practices of the University nor the Internal Revenue Code have changed. The clear wording of the Internal Revenue Code commands exempt status for the University. Even assuming that the University must be "charitable" as well as "educational" and "religious", it meets that test under traditional and contemporary definitions of charity.

The Commissioner of Internal Revenue has attempted to change the application of clearly worded Internal Revenue Code provisions. The Commissioner is granted power to interpret and enforce Internal Revenue Code provisions; however, he is not delegated authority to change the law. By grafting a requirement of a racially non-discriminatory admissions policy upon requirements for exempt status, the Commissioner is attempting to change law. He attempts this in the face of the constitutional issues raised by the University's religous beliefs and practices.

Taxation of religious belief and expression clearly violates the free exercise provisions of the First Amendment. No violence is done to the First Amendment establishment clause in that the granting of exempt status does not constitute sufficient federal involvement so as to lead to establishment questions. The granting of tax exempt status merely involves the exercise of benevolent neutrality towards religion, *Walz, infra.* The religious beliefs and practices of the University are clearly entitled to constitutional protection. Even religious beliefs and practices which prohibit education itself have been upheld, *Yoder, infra.* Furthermore, purely private discrimination has repeatedly been held by this Court to be constitutionally permissible, *Moose Lodge, infra.*

The taxation attack by Treasury officials is selective as far as religions are concerned. Only those religions believing in Biblical command against the intermarriage of the races and consequently adopting a discriminatory admissions policy are targeted. These religious beliefs and practices are entitled to the same constitutional protection as are all other religious beliefs and practices. A selective attack directed upon the particular religion adhered to by the University denies the University the equal protection

of the laws and raises serious establishment questions as far as other favored religions are concerned.

The University recognizes that its beliefs and practices are not currently in vogue. However, it is the constitutional rights of the minority, particularly the unpopular minority, which urgently require this Court's protection.

ARGUMENT

I. DO FEDERAL COURTS HAVE JURISDICTION TO GRANT INJUNCTIVE RELIEF PREVENTING THE WITHDRAWAL OF THE TAX EXEMPT STATUS OF RELIGIONS AND EDUCATIONAL ORGANIZATIONS?

A. Does the Anti-Injunction Statute, 26 U. S. C. 7421 or the exemption in the Federal Declaratory Judgment Act, 28 U. S. C. 2201, deprive the Federal Courts of jurisdiction to enjoin the revocation of the tax exempt status of petitioner where (a) the action sought to be enjoined would result in irreparable injury to Petitioner: (b) Petitioner has no remedy at law and (c) Petitioner has asserted substantial statutory and constitutional questions concerning the legality of the threatened revocation?

The Anti-Injunction Statute [3] was enacted to assure the government of the "prompt collection of its lawful revenues." [4] In the more usual situation invoking income taxation of individuals and businesses, there is great weight behind witholding the availability of injunctive relief. Petitioner concedes that an attack by one already a taxpayer upon a general taxing statute, e. g. the income tax laws, should be litigated in the tax court or in the district court

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[3] The Declaratory Judgment Act exception has been held to be coterminous with that provided by the Anti-Injunction Statute. "*Americans United" Inc. v. Walters*, 477 F. (2d) 1169, 1176; *McGlotten v. Connally*, 338 F. Supp. 448; *Tomlinson v. Smith*, 128 F. (2d) 808, 811.

[4] *Enochs v. Williams Packing Co.*, 370 U. S. 1.

in a refund action. Obviously, an injunction preventing Treasury officials from collecting the income taxes of the United States would severely restrict the orderly functioning of the Federal Government. Furthermore, an aggrieved party in the usual situation would have a remedy at law.

That is not the case where exempt organizations are involved. First, these organizations have no remedy at law insofar as their advanced assurance of deductibility of contributions is concerned. If Petitioner could take advantage of refund or tax court litigation while retaining its advanced assurance of deductibility until a final judicial decision had been obtained, its position would be similar to that of the normal taxpayer. But this cannot be done under present law. Unlike the normal taxpayer seeking judicial redress, the exempt organization suffers an irreparable loss of contributions during the litigation process. Whereas, the individual taxpayer may be made whole, either by a refund, with interest, of tax paid or by a tax court determination, the exempt organization loses either way.

The disputed "tax" where exempt organizations are involved is one which has never before been paid. The United States has not relied upon its collection. The loss of these revenues, even if the government is ultimately successful in litigation, proves no threat to the orderly administration of the tax laws.

In the usual situation the taxpayer has a possibility of succeeding and making himself whole. In any event his remedy has been held to be "adequate".[5] Here there is no question as to the "adequacy" of remedy. Here there is no remedy at all. Contributions from hundreds or thousands of contributors will be lost or diverted before there is *any*

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[5] *Chealtan v. United States*, 92 U. S. 85 (1875) see also H. R. Rep. No. 179, 68th Congress, 1st Sess. 7 (1924).

possibility of a judicial determination. How can these losses be recovered or even determined with accuracy?[6]

The University does not assert that any claim should be sufficient to trigger the granting of injunctive relief to an exempt organization. Certainly frivolous claims should not automatically invoke an injunction remedy. But in all equity matters the burden has been upon the moving party to establish his entitlement to injunctive relief. United States District Courts do not hand out injunctions upon simple request.[7] Here substantial statutory and constitutional questions have been presented of sufficient magnitude to prompt the issue of an injunction by the District Judge below and a vigorous dissent in the Court of Appeals. Where non-frivolous claims are presented, the exempt organization is entitled to full judicial review before it is penalized or possibly destroyed.

The Anti-Injunction Statute[8] refers to restraining the "assessment or collection" of taxes. In the case of an exempt organization as in the instant case, the relief sought does not literally come within the prohibitions. There has been no "assessment". There has been no attempted "collection". Any extension of the Anti-Injunction Statute beyond its literal term is unnecessary and unwarranted in the case of exempt organizations.

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[6] To deny the real and devastating loss, apart from its exact magnitude, would ignore realities.

[7] See Rule 65 F. R. C. P.

[8] The Anti-Injunction Statute, 26 U. S. C. § 7421 provides in pertinent part as follows:

> "(a) Tax.— . . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is a person against whom such tax was assessed."

B. Are the Anti-Injunction Statute, 26 U. S. C. § 7421 and the exceptions in the Federal Declaratory Judgment Act, 28 U. S. C. § 2201 unconstitutional as applied by the Court of Appeals below in that they would deprive Petitioner of Fifth Amendment due process rights to be heard by an impartial tribunal prior to the infliction of irreparable harm for which there is no remedy at law?

It is well settled that due process requirements are applicable to the taxing powers of the Federal Government. *Heiner v. Donnan*, 285 U. S. 312. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313, this court commented that, "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Subsequent cases have reaffirmed this conception of due process. The right to a hearing must be granted at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U. S. 545. The hearing must be before an impartial tribunal. *Ward v. Village of Monroeville*, 409 U. S. 57.[9] Only a countervailing state interest of overriding significance may enable a procedure, otherwise incompatible with due process, to pass constitutional muster. *Boddie v. Connecticut*, 401 U. S. 371, 377.

The decision of the Court of Appeals has the effect of applying the Anti-Injunction Statute to a situation for which the Statute was not designed and in which the policies of the statute do not operate. The inappropriateness of the application of the Anti-Injunction Statute in this context has resulted in the University being denied Due

[9] See: Memphis State Law Review 3:381 (1972-73).

Process of Law without the justification of any Governmental interest of overriding significance.

When the Commissioner of Internal Revenue decides to remove the tax exempt status of an institution, the time for determining the lawfulness of the Commissioner's action is of utmost importance. The initial loss of the University's advanced assurance of deductibility of contribution is the crucial moment in the controversy, for the subsequent injury sustained by the University through its loss of contributions does not accrue to the government in the form of increased revenue.[10] Thus, a successful suit by the University concerning the lawfulness of the government's action, after the University's tax-exempt status has been removed, is completely ineffectual as a remedy for the injury the University has sustained. The Court of Appeals acknowledged the significance of this injury in its decision:

> "Of course, the tax on any net income which may be imposed would be recoverable, but we would be naive indeed not to recognize the substantial portion that contributions play in the gross income of any institution of higher learning and the adverse effect on those contributions if their deductibility for income and estate tax purposes of the donors is disallowed. If Jones University is required to litigate its tax-exempt status after that status has been withdrawn, we can predict with confidence that during the period of litigation it will lose gifts and contributions which will never be recoverable even if it is successful in having its tax-exempt status restored" (A., 136).

The Due Process Clause requires that the University be afforded an opportunity to be heard and present a defense before it is made to suffer a grievous, irrevocable loss.

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[10] The lost contributions, themselves, may not become available to the government for taxation purposes. The donors will presumably divert their funds to other tax-exempt organizations.

Anti-Fascist Committee v. McGrath, 341 U. S. 123; *Wisconsin v. Constantineau*, 400 U. S. 433.

There is, moreover, no overriding governmental interest which would be furthered by denying the University a judicial hearing before its irreparable injury is sustained. A government claim on a fixed sum of University funds does not arise concomittantly with the removal of the University's tax exempt status. Thus, a delay in determining the controversy until the tax exempt status has been removed does not appreciably expedite the government's collection of revenues from the University. Moreover, the most serious harm to the University is not directly derived from the obligation to pay taxes to the government in the future, but rather from the loss of contributions which affect the University immediately upon loss of its tax-exempt status.

There is, however, a matter of overriding significance favoring a prior judicial hearing for the University in conformity with traditional Due Process principles. The University has raised substantial statutory and constitutional objections to the Commissioner's proposed actions. This Court has voiced its concern that First Amendment guarantees not be subject to infringement through the operation of the tax laws. *Speiser v. Randall*, 357 U. S. 513. This Court commented in *Speiser* that," . . . it does not follow that because only a tax liability is here involved, the ordinary tax assessment procedures are adequate when applied to penalize speech." The Court went on to hold that:

> ". . . when the constitutional right to speak is sought to be deterred by a State's general taxing program, due process demands that the speech be unencumbered until the State comes forward with sufficient proof to justify its inhibition. The State clearly has no such compelling interest at stake as to justify a

short-cut procedure which must inevitably result in suppressing protected speech." *Id.* at 528.

In essence, the Commissioner has initiated action against the University because of the University's religious beliefs. The University is, therefore, placed in the dilemma of either abandoning the exercise of certain tenets of its religion and maintaining its tax exempt status; or, holding to its religious beliefs and suffering the ensuing financial catastrophe occasioned by the removal of its tax exemption. In either case the University's constitutional guarantee of the freedom to exercise its religion is severely inhibited. As the Court indicated in *Speiser*, First Amendment rights are of such importance that Due Process requires they remain unencumbered until the lawfulness of the government's action in suppressing them is determined.

It is essential to Due Process that the lawfulness of the government's action be determined before an impartial tribunal. *Ward v. Village of Monroeville*, 409 U. S. 57. In *Ward* the petitioner was compelled to stand trial for traffic offenses before the mayor, who was responsible for village finances and whose Court provided a substantial portion of village funds. This Court held that the petitioner was denied a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause. Furthermore, in countering an argument that any unfairness in the trial could be corrected on appeal and a trial *de novo* in another court, this Court stated:

> "This 'procedural safeguard' does not guarantee a fair trial in the mayor's court; there is nothing to suggest that the incentive to convict would be diminished by the possibility of reversal on appeal. Nor, in any event, may the State's trial court procedure to be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial

adjudication. Petitioner is entitled to a neutral and detached judge in the first instance." *Id.* at 61.

The decision of the Court of Appeals would deprive the University of any meaningful prior hearing. The very agency which is seeking to remove the University's tax exempt status is placed in the position of making the final determination of the merits of the University's objections before the Agency's decision is implemented.

This denial of the Due Process right to an impartial tribunal is rendered even more onerous by the circumstance that the University will sustain an irreparable loss of contributions before it can obtain an impartial adjudication. Thus, this Court's concern for Due Process in the first instance, as expressed in *Ward,* is especially pertinent to the University's situation.

The University is compelled to submit to the Constitutionally infirm administrative procedures of the Internal Revenue Service as the only available method of warding off irreparable injury. *Ward* requires that these administrative procedures meet constitutional standards on their own merits. The deprivation of the University's right to Due Process in this first instance, is not remedied by a procedure which eventually permits an impartial adjudication some time after the most grievous harm has been suffered. In addition to the partisan role of the Commissioner in the controversy, there are certain inherent characteristics of an administrative agency which render the Internal Revenue Service unsuitable for the task of providing the University with a meaningful hearing.[11] An administrative

[11] Monaghan, *First Amendment "Due Process"*, 83 Harv. L. Rev. 518 (1969-70). Professor Monaghan remarks on the basic institutional differences between the courts and administrative agencies.

"First, long judicial tenure frees judges, in most cases, from direct political pressures. Judicial insulation encourages impartial decision-making; more importantly, it permits the courts to take the 'long view' of issues. Administrative bodies, particularly at the state level, are rarely so insulated; indeed they are often seen primarily

agency functions as an expert in a restricted area of the law, a circumstance which creates in the agency a narrow view of matters coming before it. The courts, however, do not suffer from this administrative tunnel vision and can view an issue from a broad perspective.

The University has made substantial statutory and constitutional objections to the Commissioner's decision to remove the University's tax exempt status. Issues have been raised which are outside the field of the Commissioner's expertise, and which, for their resolution, require a broad view of constitutional guarantees. The University's Due Process right to a timely, impartial and meaningful determination of these matters can only be obtained through a judicial hearing prior to the implementation of the Commissioner's decision.

While the Internal Revenue Service functions as an expert in matters of taxation, the issues involved in this controversy range far beyond the Service's field of expertise. Common law notions of charity and the constitutional guarantees of Due Process and free exercise of Religion are matters concerning which the Commissioner possesses no specialized knowledge.

C. Did the Court of Appeals misapply the exception to the application of the Anti-Injunction Statute enunciated by this Court in Enochs v. Williams Packing Co., 370 U. S. 1 and Miller v. Standard Nut Margarine Co., 284 U. S. 498?

The Court of Appeals, although declining to rule on the ultimate merits of the University's claim, relied upon *Green v. Connally,* 330 F. Supp. 1150 (D. D. C. 1971), aff'd

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as political organs. Second, the role of the administrator is not that of the impartial adjudicator but that of the expert—a role which necessarily gives an administrative agency a narrow and restricted viewpoint." *Id.* at 522.

per curiam sub nom. Coit v. Green, 404 U. S. 997 [12] to conclude that the "under no circumstance" test of *Williams Packing* had not been met. The University submits that the Court of Appeals' reliance upon *Green* was misplaced in the *Williams Packing* and *Nut Margarine* context and that, at least the court should have considered the statutory and constitutional argument advanced by the University.

In *Green*, plaintiffs, Negro citizens of Mississippi, brought an action against treasury officials seeking an injunction to prevent the granting of tax exempt status to "segregated academies in Mississippi." *Green* was simply another legal battle by the proponents of racial integration against efforts of the State of Mississippi to avoid the effects of decisions of this court striking down segregation in public schools. The District Court enjoined treasury officials from granting tax exempt status to these segregated Mississippi private schools.

Green was decided in a doubtful adversary context.[13] Originally treasury officials were the only defendants. They initially asserted, as they do in this case, that the action could not be maintained. However, in *Green* the Government in its early responses vigorously asserted that not only should private segregated schools be granted tax exempt status but that it was required. Shortly before the *Green* court issued its permanent injunction, the Government changed course 180 degrees. After this abrupt reversal in position, there was, in effect, little if any contest.[14]

The district court reached its decision only after the use of questionable and tortured reasoning. It first gave

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[12] Respondents also relied upon *McGlotten v. Connally*, 338 F. Supp. 448 (D. D. C. 1972) and *Crenshaw County Private School Foundation v. Connally*, 474 F. (2d) 1185. Neither of these cases involve the constitutional rights asserted by the University here.

[13] Bittker & Kaufman: *Taxes and Civil Rights: "Constitutionalizing" the Internal Revenue Code*. 82 Yale L. Jor. 51, 59. "By analogy the issue of whether the plaintiff had 'standing to sue,' one might ask whether the defendant had 'standing to defend.'"

[14] See, footnote 12.

unambiguous code provisions a construction that no court or Commissioner of Internal Revenue had ever before attempted during the entire history of the Internal Revenue Code's existence. Secondly, it concluded that the public policy of this nation is that private educational institutions may not discriminate on a racial basis. Such is not and never has been the public policy of this nation. *Cf. Moose Lodge, infra.* The district court did correctly express federal public policy as prohibiting federal support for private schools that practice race discrimination. But even *Green* conceded:

> "Neither plaintiff's prayers nor defendants' policy seeks to stop intervenors from sending their children to segregated private schools at their own expense, paying the full cost of education at such schools. The question posed by intervenors' contentions is whether the schools of their private choice are entitled to government support through tax exemptions and deductability of contributions. . . ."

Therefore, assuming the initial premise of *Green* and assuming further the validity of the Court's reasoning that an organization must be charitable in addition to being religious or educational or literary, etc., the Court had to go a step further to find "federal support of" or "federal involvement with" the schools in question; the *Green* court found such support and involvement in the form of a school's tax exempt status granted to said schools. Such finding is clearly erroneous and contrary to the decision of this Court in *Walz v. Tax Commission of the City of New York,* 397 U. S. 664.

Even the district court in *Green* recognized that religious freedoms may be invoked and refused to consider their impact:

> "The special constitutional provisions ensuring freedom of religion also ensure freedom of religious schools, with policies restricted in furtherance of re-

ligious purpose. . . We are not called upon to consider the hypothetical inquiry whether tax-exemption or tax deduction status may be available to a religious school that practices acts of racial restriction because of the requirements of the religion." 330 F. Supp. p. 1169.

This Court has never held that the Anti-Injunction Statute is a complete bar to suits which may directly or indirectly involve an injunction in tax matters. In *Nut Margarine,* the court allowed injunctive relief to halt the assessment and collection of an excise tax on margarine "[I]n cases where complainant shows that in addition to the illegality of an exaction in the guise of a tax, there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence, a suit may be maintained to enjoin the collection. *Dows v. Chicago* 11 Wall 108, *Hannewinkle v. Georgetown,* 15 Wall 547, *State Railroad Tax Cases,* 92 U. S. 575, 614." 284 U. S. p. 509.

The two-fold test in *Nut Margarine* that complainant must first show the illegality of the assessment and second circumstances sufficient to bring the case within an acknowledged head of equity jurisprudence, has been met by the University here. A *prima facie* showing of illegality of the threatened revocation has been made. A showing of immediate and irreparable harm has been made sufficient to give rise to traditional equity jurisdiction. The University submits that if the *Nut Margarine* case was the sole standard for determining jurisdiction, there would be little doubt as to the propriety of the injunction issued by the District Court.

In *Williams Packing* this Court was faced with a situation involving a taxpayer's attack upon its liability for unemployment and social security taxes. The taxpayer sought a declaration that fishing boat crews were not its employees and, therefore, that no employment taxes were due. Injunc-

tive relief was sought and granted by the District Court. This Court reversed. "The manifest purpose of § 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to disputed sums be determined in a suit for refund. In this manner the United States is assured of prompt collection of its lawful revenue. Nevertheless, if it is clear that under no circumstance could the Government ultimately prevail, the central purpose of the Act is inapplicable and, under the *Nut Margarine* case, the attempted collection may be enjoined if equity jurisdiction otherwise exists." 307 U. S. p. 7.

Thus, the Court in *Williams Packing* seemed to strengthen the required showing from "illegality of the exaction" to a showing "that under no circumstance could the Government ultimately prevail." Literal application of the "under no circumstance" test would practically remove any exception to the Anti-Injunction Statute.[15] As stated by Judge Boreman dissenting below " . . . it is unlikely that the Court [of Appeals] would assume to state positively, in advance, what the Supreme Court would hold under *any* given set of circumstances. To do so would be presumptious indeed." (A., 139.)

However the *Williams Packing* "under no circumstance" test was predicated upon the existence of a more or less adequate remedy in the form of a refund suit. " . . . [I]f Congress had decided to make the availability of the injunctive remedy against the collection of federal taxes not lawfully due depend upon the *adequacy* of the remedy, it would have said no explicitly." 370 U. S. p. 6 (emphasis added). Without arguing the adequacy of a refund suit in the *Williams Packing* circumstances it is apparent that

[15] *Federal Taxation: Section 7421(a) of Internal Revenue Code Literally Construed to Ban all Suits to Enjoin Assessment or Collection of Taxes.* Duke Law Journal. Vol. 1963: 175.

this court recognized the existence of some remedy when enunciating the "under no circumstance" test.

The Court of Appeals subjected the University to the practically impossible *Williams Packing* "under no circumstance" test and at the same time recognized that there is no remedy available to the University. "If Jones University is required to litigate its tax exempt status after that status has been withdrawn, we can predict with confidence that during the period of litigation it will lose gifts and contributions which will never be recoverable even if it is successful in having its tax exempt status restored." (A., 136.) Thus the Court of Appeals applied the "under no circumstance" test which had only been previously endorsed by this Court where some remedy was available, to a situation where admittedly there is no remedy at all.

It is necessary to distinguish between the present situation of no remedy and a finding of irreparable harm. Here virtually all exempt organizations are automotically subject to irreparable harm for which there is no remedy through the loss of advanced assurance and then contributions. In *Williams Packing* the irreparable harm allegedly would presumably result from the particular circumstance of the individual taxpayer there involved. If a taxpayer in the *Williams Packing* circumstance had adequate financial resources, the refund action would be a complete and adequate remedy. In the case of exempt organizations, all suffer a loss of contributions regardless of the individual organization's financial status. The *Williams Packing* test as applied by the Court of Appeals affects exempt organizations as a class rather than as individual taxpayers.

The power assumed and exercised by the taxing authority here is without remedy or restraint. Such a situation is strikingly different from that enunicated by this Court in *Williams Packing*. At the very least a midway point between the harsh rule of *Williams Packing* and the

more realistic view of *Nut Margarine* should be applied in the case of exempt organizations. The test applied by the Court of Appeals raises serious constitutional Due Process questions which can be avoided by the application of a test more suited to the realities surrounding exempt organizations.[16]

D. Does this case involve a suit to restrain the assessment or collection of a tax so as to trigger the provisions of the Anti-Injunction Statute?

Treasury officials have given the University a choice: it may suffer revocation of its tax exempt status or it may violate its religious principles and practices as expressed in its admissions policy and retain its tax exempt status. The decision desired by the government is clear: it desires a change of admissions policy. Upon the mere hope that the University might comply with government wishes, revocation action was deferred (A., 52). The first step in revocation procedures would be an attempt "to elicit conformance" (A., 53). If the initial attempt "to elicit conformance" failed, it would be repeated (A., 53). Certainly it is most unusual for Treasury officials to try so hard to avoid imposing a tax. The only reasonable conclusion is that the government is primarily interested in conformance rather than payment.

No matter how vigorously the merits and applicability of the Anti-Injunction Statute are argued one vital point is inescapable: If the University will accede to the demands of the Internal Revenue Service and abandon its religious beliefs and practices, no tax will be imposed. What the government seeks to enclose in the midst of tax cases is no more than a penalty. If the University does not

[16] Statutes should be interpreted to preserve their constitutionality as applied. *Hadnote v. Amos*, 394 U. S. 358; *U. S. v. Vuitch*, 402 U. S. 62; *Watts v. U. S.*, 394 U. S. 705.

accede to the wishes of the government, it is subjected to a penalty in the form of taxes and loss of contributions.

The fact that this is not a tax case is pointed out by what the government would have the University do to avoid revocation of its tax exempt status. This entire controversy would be moot if the University were to change its admissions policy. The University would not be required to expend any sums, would not be required to make a single bookkeeping entry, and would not be required to affect its financial status in any way to avoid taxation. In effect, the alleged tax may be paid by the relinquishment of vital constitutional rights. This involves not revenue but rather unconstitutional compulsion.

In a country where government and legal system are based upon constitutional guarantees, one shudders at the present attempt of the government to convert currently popular social views of some into "public policy," to distort clearly-worded statutory provisions, and to bludgeon the most precious liberties of any free people in the guise of a tax. To allow the use of revenue provisions, not to collect revenue, but to trample constitutional guarantees in the guise of a tax is totally repugnant to our Constitution. The iron hand of repression is no less repugnant when clothed in the velvet glove of the revenue statutes.

It is apparent that the news releases of the Internal Revenue Service of July 10, 1970, and July 19, 1970 (A., 39, 40) were not connected in any way with the collection of federal revenues but instead were the attempt to use the onerous taxing power of the government to force recalcitrant parties in line with social concepts not in any way authorized by any act of Congress. As pointed out, if the University were willing to abandon its First Amendment rights, it would have no tax to pay. There has been no change in the operation of the University, its religious beliefs and practices and its admissions policy during its

entire forty-odd years of existence. The government has constantly held that the University was not subject to federal taxation because it was an exempt organization under the provisions of § 501 (c) (3). There has been no change in the University or the tax laws calling for additional revenue to federal coffers.

In *DeMasters v. Arand,* 313 F. (2d) 79 (1963), the taxpayer sought to restrain the Internal Revenue Service from investigating possible income tax liability for years barred by the Statute of Limitation in the absence of fraud. There the Court said:

> ". . . If appellants were indeed prohibited by § 7650(b) or the Fourth Amendment from initiating this inquiry, a suit to restrain their unlawful conduct would not be barred by the Doctrine of Sovereign Immunity."

In a footnote, the Court stated:

> "We are satisfied that this taxpayer's suit is neither one for the Declaratory Judgment 'with respect to federal taxes' precluded by 28 U. S. C. A. § 2201; nor an action 'for the purpose of restraining the assessment or collection of any tax' precluded by 26 U. S. C. A. § 7421(a)."

Similarly, the University here brings an action to enjoin the government from unconstitutional interference with rights guaranteed the University by the First and Fifth Amendments to the Constitution. This Court in *Hill v. Wallace,* 259 U. S. 44 rejected the attempt by Treasury Officials to dismiss the suit, contending that the action was an attempt to enjoin the collection of a tax contrary to a predecessor of § 7421(a), of the current Internal Revenue Code. The pertinent ruling in *Hill* was that simply clothing regulatory action in the guise of a tax does not invoke the Anti-Injunction Statute. The Court stated:

> "It is impossible to escape the conviction, from a full reading of this law, that it was enacted for the

purpose of regulating the conduct of businesses of boards of trade through the supervision of the Secretary of Agriculture and the use of an administrative tribunal. . . . The manifest purpose of the tax is to compel boards of trade to comply with regulations, many of which can have no relevance to the collection of a tax at all. . . . The act is in essence and on its face a complete regulation of boards of trade, with a penalty of $.20 a bushel on all 'futures' to coerce boards of trade and their members into compliance."

Likewise, the government's threatened action is in essence an attempt to regulate the admissions policies of private schools with a penalty of loss of tax exempt status to coerce private schools into compliance.

E. Do Federal Courts have inherent jurisdiction under the Constitution to grant injunctive relief against Treasury Officials where a prima facie showing has been made of irreparable injury and of illegal and unconstitutional threatened action?

The propriety of granting injunctions in cases where government officials act or threatened to act illegally or unconstitutionally has been recognized by this Court in a long line of cases commencing with *United States v. Lee,* 106 U. S. 196 (1882). These cases hold that federal courts have inherent jurisdiction to retrain illegal or unconstitutional actions by federal officers. Such recognition does no damage to the long-standing doctrine of sovereign immunity. The sovereign cannot act illegally or unconstitutionally and therefore if the action is unconstitutional or illegal the action is not the action of the sovereign and no sovereign immunity is involved. *Larson v. Domestic & Foreign Commerce Corp.,* 337 U. S. 682, is in point. There the Court stated:

"These two types have frequently been recognized by this Court as the only ones in which a restraint may

be obtained against the conduct of government officials. The rule was stated by Mr. Justice Hughes in *Philadelphia Co. v. Stimson*, 1912, 223 U. S. 605, 620, 32 S. Ct. 340, 334, 56 L. Ed. 570, where he said '. . . in case of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. [Citing cases] And it is equally applicable to a federal officer acting in excess of his authority or under an authority not validly conferred.'" 337 U. S. at 690, 691.

In *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narc.*, 409 F. (2d) 718 (1969), the Court in considering the jurisdiction issue stated:

"It is now clear that there is implied injunctive remedy for threatened or continuing constitutional violations. See *Bell v. Hood*, 327 U. S. 678, 684 and n. 4, 66 S. Ct. 773, 90 L. Ed. 939 (1946); *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 696-697, 69 S. Ct. 1457, 93 L. Ed. 1628 (1949); *Ex Parte Young*, 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908); *United States v. Lee*, 106 U. S. 196, 1 S. Ct. 240, 27 L. Ed. 171 (1882). This exercise of the general equity powers of the Federal Court initially may have developed in part because of the lack of equity jurisdiction in many of the states. See *Hart & Wechsler, supra* at 578, 650-651. But injunctive relief also seems to be an essential corollary to the power of judicial review established by *Marbury v. Madison*, 1 Cranch 137, 2 L. Ed. 60 (1803). The power to declare an action of the legislative or executive branch unconstitutional is an empty one if the judiciary lacks a remedy to stop or prevent the action. Few more unseemly sights for a democratic country operating under a system of limited governmental power can be imagined than the specter of its courts standing powerless to prevent a clear transgression by the government of a constitutional right of a person with standing to as-

sert it. Cf. *Crowell v. Benson,* 285 U. S. 22, 56-61, 52 S. Ct. 285, 76 L. Ed. 598 (1932). Thus, even if the Constitution itself does not give rise to an inherent injunctive power to prevent its violation by governmental officials, there are strong reasons for inferring that existence of this power under any general grant of jurisdiction to the federal courts by Congress."

When *Bivens* went to this Court, 403 U. S. 388, Mr. Justice Brennan stated on the point here involved:

> "Respondents seek to treat the relationship between a citizen and a federal agent unconstitutionally exercising his authority as no different from the relationship between two private citizens. In so doing, they ignore the fact that power, once granted, does not disappear like a magic gift when it is wrongfully used. An agent acting—albeit unconstitutionally—in the name of the United States possesses a far greater capacity for harm than an individual trespasser exercising no authority other than his own. . . . And 'where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.'" 403 U. S. at p. 341, 342.

By treating this matter as strictly a tax case, the Court Appeals has created the potential for enormous abuses of power. Not only may currently popular views be coerced upon dissenting exempt organizations, but those unfortunate enough to find their names on an "enemies list" may find their politics as well as their religion subject to preemptory taxation. Unfettered control over the financial life and death of a multitude of organizations, from ultra-conservative to ultra-liberal, would ultimately lead to mediocrity and conformity, conformity with the views of the taxing authority then in power.

The University is in no way seeking to enjoin the assessment of collection of a tax, nor is it seeking a declara-

tory judgment. The University is seeking to enjoin what it contends to be, and what the facts clearly show to be, an action on the part of the government clearly beyond the authority conferred upon it by acts of Congress and clearly violating the constitutional rights of the University to freely practice its religious beliefs without governmental interference and to operate as a tax exempt organization free from discriminatory actions. These actions on the part of government officials bear no relationship to the federal revenues except to use the threat of the considerable burdens of taxation to cause a relinquishment of basic rights guaranteed by statute and the Constitution. The Government seeks to use its biggest stick: the power to tax is the power to destroy. If the government is actually interested in the federal revenue, it would seem far more sensible to meet the issue head on and decide it promptly instead of seeking to delay a judicial determination many months in the future.[17]

The University is aware of those cases dismissing actions for want of jurisdiction where the question presented involved the tax exempt status of institutions. *Jolles Foundation, Inc. v. Moysey,* 250 F. (2d) 166, *Kyron Foundation v. Dunlap,* 110 F. Supp. 428. But these cases are not applicable here. The University does not ask the Court to substitute its judgment for that of a federal officer acting in his official capacity. The entire thrust of this action is that the appellants are threatening to act outside their authority, to exercise judgment and discretion which is not within their power and because of its unconstitutional nature is beyond the power of the federal government.

If the question here was not the validity of the action threatened but the applicability of such action to the Uni-

[17] The government may waive the Anti-Injunction Statute. *Helvering v. Davis,* 301 U. S. 619.

versity, it would be a different case. For example, if there were no contest as to the legality of the federal government acting through the Treasury Department and the Internal Revenue Service revoking the University's tax exempt status because of its admissions policy, but rather a contest involving the applicability of such a rule to the factual situation here, there could well be a case where the court was asked to preempt the valid discretional power of a Federal officer, but the University has stated in sworn pleadings that it discriminates in its admissions policy and thus comes squarely within the avowed policy of the government. This is not a case where the Commissioner must decide whether the University has a racially nondiscriminatory admissions policy. The University challenges not the applicability of the Rule, but the Rule itself.

II. IS THE REVOCATION OF THE UNIVERSITY'S TAX EXEMPT STATUS SOLELY BECAUSE OF ITS RELIGIOUS BELIEFS AS EXPRESSED IN ITS ADMISSIONS POLICY ILLEGAL OR UNCONSTITUTIONAL?

A. Is the threatened revocation of the University's tax exempt status unlawful and contrary to the clear and unambiguous provisions of the Internal Revenue Code?

The threatened action of the government seeking to revoke the tax exempt status of Bob Jones University unless the University establishes and maintains a racially nondiscriminatory admissions policy would be contrary to the provisions of § 501 (c)(3) of the Internal Revenue Code of 1954. That section provides exemption from taxation for:

> "Corporations, and any community chest, fund, or foundation organized and operating exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention

> of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

This statutory exemption from income taxation for such organizations has existed for many years, along with comparable sections which have excluded in whole or in part from the taxable income of donors, their contributions or donations to such organizations.[18] Little, if any, change has occurred in the criteria or language of these provisions since their earliest enactment.

Under the language of § 501(c)(3) an organization is entitled to exemption from taxation if it meets the following requirements: (1) If it is organized and operated exclusively for religious, charitable . . . or educational purposes; (2) If no part of its net earnings inure to the benefit of any private shareholder or individual; and (3) If it does not conduct or engage in political or lobbying activity. *Stevens Bros. Foundation, Inc. v. Commissioner of Internal Revenue,* 324 F. (2d) 633 (8 Cir. 1963). The question then is whether the admissions policy of Bob Jones University is such that it cannot be classed as organized and operated exclusively for religious or charitable purposes. Government officials would read into the language of this section the additional condition that even though a religious, charitable or educational organization is to be exempt, it must also practice racially non-discriminatory admissions policies. It is the University's contention that such a reading and interpretation of this statute is contrary to its

[18] See § 101(6) of the Internal Revenue Code of 1939 and prior revenue acts.

plain and unambiguous terms and to the intention of the Congress which enacted it and the subsequent Congresses which have repeatedly reenacted it.

An elementary and well-established rule of statutory construction is that when the meaning of a statute is clear and unambiguous on its face, then it is not subject to explanation or interpretation. The plain meaning of the language is controlling. Nothing is stated in the language of this section with regard to the admissions policies of an educational organization. All that is required is that it be organized and operated for one of the purposes listed in the section. The regulations promulgated by the Secretary of the Treasury recognized that which is evident from a reading of this section.

> "(i) An organization may be exempt as an organization described in § 501(c)(3) if it is organized and operated exclusively for *one* or more of the following purposes:
>
> (a) Religious
> (b) Charitable
> (c) Scientific
> (d) Testing for Public Safety
> (e) Literary
> (f) Educational, or
> (g) Prevention of cruelty to children or animals.
>
> • • •
>
> "(iii) *Since each of the purposes specified in Subdivision (i) of this subparagraph is an exempt purpose in itself,* an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose, or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an

organization claims exemption on the ground that it is 'educational,' exemption will not be denied if, in fact, it is 'charitable.' Treas. Regs. § 1.501(c)(3)-1(d)(1)" [Emphasis added].

The term "educational" is defined in Treasury Regulations § 1.501(c)(3)-1(d)(3) for purposes of its use in § 501(c)(3) as relating to:

> "(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community.
>
> "An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion."

The first example given of an organization in the regulation quoted from above is as follows:

> "An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on."

Bob Jones University was organized "to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures." (A., 15.) The University offers educational instruction to the individual through its College of Arts and Sciences and its School of Religion, Education, Fine Arts, and Business Administration. It has

a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Clearly, Bob Jones University, organized and operated for the foregoing purposes, is an organization which meets the requirements set out in the plain language of § 501(c)(3) of the Internal Revenue Code of 1954 and the Treasury Regulations promulgated thereunder and quoted above. What is amazing is that Treasury officials have not questioned any of the facts stated in the immediately preceding paragraph. The sole reason for the threatened revocation of the exempt status of Bob Jones University is that as an expression of its religious beliefs it practices a racially discriminatory admissions policy. Apparently the government's position is that such an organization is contrary to public policy and is not therefore a charitable organization and is not entitled to an exempt status.

To require that an organization must be "charitable" in addition to being "religious" or "educational" would, in the first place, be contrary to the plain and unambiguous language of § 501(c)(3) and would require a tortured reading thereof. The term "charitable" is only one of a number of adjectives appearing in § 501(c)(3) which are descriptive of organizations which may be exempt from taxation. If it is organized for and "engaged primarily in activities which accomplish *one or more* exempt purposes specified in § 501(c)(3) of the 1954 Code," then it is entitled to exemption. *Broadway Theater League of Lynchburg, Va., Inc. v. United States*, 393 F. Supp. 346, 353 (D. C. Va. 1968). [Emphasis added] Under no reading of § 501(c)(3) can the word "charitable" be said to modify the words "religious" or educational." Such an interpretation as that would make "taxpayers of those whom the Act, properly construed, does

not tax." *Independent Petroleum Co. v. Fly,* 141 F. (2d) 189, 191 (5 Cir. 1944).

Conceding, without admitting, that the terms of § 501(c)(3) are ambiguous and subject to interpretation, then any such ambiguities should be resolved in favor of Bob Jones University.

"It is elementary that tax laws are to be interpreted liberally in favor of taxpayers and that words defining things to be taxed may not be extended beyond their clear import." *Miller v. Standard Nut Margarine Co.,* 284 U. S. 498, 508. See also, *Helvering v. Bliss,* 293 U. S. 144, *C. F. Mueller Co. v. Commissioner of Internal Revenue,* 190 F. (2d) 120 (3 Cir. 1951).

Even assuming that the construction placed upon § 501(c)(3) by the government is correct, it is the University's position that it would still be entitled to tax exempt status as a "charitable"—organization. Under Treasury Regulations § 1.501(c)(3)—1 (d) the term "charitable" is defined as follows:

> The term "charitable" is used in § 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in § 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; *Advancement of religion; advancement of education* or science; erection or maintenance of public buildings, or works; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency . . . The fact that an organization, in carrying

> out its primary purpose, advocates social or civil changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under § 501(c)(3) so long as it is not an "action organization" of any one of the types described in Paragraph (c) (3) of this section [Emphasis added].

It is virtually impossible to include all of the purposes which have been held by the courts to be charitable purposes. Perhaps the classic expression of the judicial idea of the scope of charitable purposes is that of Lord McNaughten in the case of *Commissioners for Special Purposes of Income Tax v. Pemsel,* AC 531, 583 (1891): "'Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; trusts for other purposes beneficial to the community, not falling under any of the preceding heads." It is apparent however that organizations or trusts established for the advancement of education or religion have long been recognized as charitable. Restatement (2nd) Trusts, § § 370(a), 371, 371(d); 4A. Scott, *The Law of Trusts,* § § 370, 371 (Third edition 1967). "[A]ll gifts for the promotion of education are charitable in the legal sense." *Russell v. Allen,* 107 U. S. 163, 172. Nor is a trust for education any less a charitable trust "although the persons to receive the education are of a limited class, if the class is not so small that the purpose is not of benefit to the community. Thus, a trust for the education of children living in a certain district is charitable. So is a trust to educate persons of a particular race or religion." 4 A. Scott, *Trusts,* § 370.6. For example, a trust for the benefit of "worthy, deserving, poor, white, American, Protestant, democratic, widows and orphans" was upheld in *Beardsley v. Selectmen of Bridgeport,* 53

Conn. 489, 3 A. 557 (1885). In the more recent case of *In Re Estate of Robbins,* 21 Cal. Rptr. 797, 371 P. (2d) 573 (1962), Justice Traynor, writing for the majority of the Supreme Court of California, upheld a trust as charitable which provided for the education, maintenance and support of "such minor Negro child or children, whose father or mother, or both, have been incarcerated, imprisoned, detained or committed in any federal, state, county or local prison or penitentiary, as a result of the conviction of a crime or misdemeanor of a political nature." In light of these authorities, it is difficult to imagine how Bob Jones University, organized and operated "to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures," (A., 15). does not come within the term "charitable" in its generally accepted legal sense.

It is true that as a general rule a purpose is not charitable if its accomplishment is not of such social interest to the community as to justify permitting the property to be devoted to the purpose in perpetuity. Restatement (2nd) Trusts § 368(b). It is also true that "a trust for a purpose the accomplishment of which is contrary to public policy, although not forbidden by law is invalid." Restatement (2nd) Trusts § 377(c). However, as has already been pointed out, a trust for the purpose of the advancement of education and/or religion has long been recognized as charitable and therefore as beneficial to the community and as not being against public policy. Mr. Justice White recognized this in his concurring opinion in *Evans v. Newton,* 382 U. S. 296, 302, when he stated "the first three categories identified by Lord MacNaughten designate trust purposes that have long been recognized as beneficial to the community as a whole—

whether or not immediate benefit is restricted to a relatively small group. . ." Is it against public policy for a purely private educational and religious institution, receiving no assistance from either federal or state governments, to practice a racially discriminatory admissions policy based upon its religious belief that the separation of the races is dictated by the Holy Scriptures? Furthermore, these beliefs and practices have not sprouted as a response to court rulings requiring integration of public schools. They are not of recent vintage but have existed since the founding of the University some forty years ago. Is it against public policy for a religious and educational institution and organization to practice its religious beliefs? The language and holding of the Court in the case of *Commissioner of Internal Revenue v. Tellier,* 383 U. S. 687, 694, is particularly appropriate in answering this last question. There the Court held that the taxpayer might deduct the expenses he incurred in his unsuccessful defense of criminal prosecution in connection with securities transactions. Mr. Justice Stewart, delivering the opinion of the Court, stated: "No public policy is offended when a man faced with serious criminal charges employs a lawyer to help in his defense. This is not 'proscribed conduct,' it is his constitutional right." Likewise in this instance, the University's admissions policies are based upon the free exercise of its religious beliefs, which is guaranteed by the First Amendment to our Constitution. The exercise of constitutional rights does not offend public policy.

B. Is the threatened revocation of the University's tax exempt status unlawful and beyond the delegated powers of Treasury Officials?

Supervision of the administration and enforcement of the Internal Revenue Code is entrusted to the Secretary of

the Treasury.[19] Under § 7802 of the Internal Revenue Code, the office of the Commissioner of Internal Revenue is created. That officer "shall have such duties and powers as may be prescribed by the Secretary."[20] Congress has further provided that "the Secretary or his delegate shall prescribe all needful rules and regulations as may be necessary by reason of any alteration of law in relation to Internal Revenue."[21]

The authority granted to the Secretary of the Treasury or his delegates in the sections cited above has been clearly defined by the courts. It is the Congress and not the Secretary of the Treasury nor the Commissioner of Internal Revenue that prescribes the tax laws. That power cannot be delegated by the Congress. *Dixon v. U. S.*, 381 U. S. 68, *Commissioner of Internal Revenue v. Produce Reporter Company*, 207 F. (2d) 586 (7 Cir., 1953); *Commissioner of Internal Revenue v. Landers Corp.*, 210 F. (2d) 188 (6 Cir. 1954); *Commissioner of Internal Revenue v. Winslow*, 113 F. (2d) 418 (1 Cir. 1940); *Northern Natural Gas Co. v. O'Malley*, 277 F. (2d) 128 (8 Cir. 1960); *Lincoln Electric Co. Employees' Profit-Sharing Trust v. Commissioner of Internal Revenue*, 190 F. (2d) 236 (6 Cir. 1951); *A & N Furniture & Appliance Co. v. United States*, 271 F. Supp. 40 (D. C. Ohio, 1967). Perhaps the best statement of the rule is found in the case of *Manhattan General Equipment Co. v. Commissioner*, 297 U. S. 129:

> The power of an Administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law, for no such power can be delegated by Congress, but the power to adopt regulations to carry into effect the will of Congress as expressed by the Statute. A regulation which does not do this but operates to cre-

[19] 26 U. S. C. § 7801.
[20] 26 U. S. C. § 7802.
[21] 26 U. S. C. § 7805.

ate a rule out of harmony with the statute is a mere nullity. 297 U. S. p. 134.

The purpose of administrative regulations and rulings is to construe an ambiguous statute and to thereby clarify its meaning. However, rulings and regulations cannot be made which are contrary to unambiguous language of the law. *U. S. v. Shirah,* 253 F. (2d) 798 (4 Cir. 1958). "A right clearly created by statute cannot be taken away by regulation." *Northern Natural Gas Co. v. O'Malley, supra.* Nor does the power to make rules and regulations extend to making taxpayers of those whom the statute does not tax. *Independent Petroleum Corp. v. Fly,* 141 F. (2d) 189, 191 (5 Cir., 1944).

It is argued elsewhere in this brief that the threatened actions of the appellants in this litigation would be contrary to the plain and unambiguous language of § 501 (c) (3) of the Internal Revenue Code of 1954. It has also been argued that the University meets the requirements set out in § 501 (c) (3), and those arguments and authorities will not be recited at this point. Section 501 (a) authorizes tax exemption to those organizations described in 501 (c) (3). It states that such an organization "*shall* be exempt from taxation." 26 U. S. C. A. § 501 (a). [Emphasis added.] It does not say that such an organization "may" be exempt from taxation if the Secretary of the Treasury or the Commissioner of Internal Revenue so chooses. Usually, "shall" is the language of command. *Northern Natural Gas Co. v. O'Malley, supra.* Here, Treasury Officials have made no finding that the University is not a religious and/or educational organization. They have threatened to revoke the University's existing tax exempt status solely because it exercises its religious beliefs. The University respectfully contends that such action on the part of Treasury Officials would violate the authority granted to them by the Congress in that it

would enable them to write into the law an additional requirement for tax exemption. It would allow them to make law. It would allow them to make taxpayers of those persons whom the law does not tax.

This is not to deny the right of Treasury Officials to correct an erroneous ruling of law in proper circumstances. *Automobile Club of Mich. v. Commissioner of Internal Revenue,* 353 U. S. 180. Here, there is no error of law to be corrected by the threatened action. The language of § 501 (c) (3) is clear and the University meets the requirements of that language. Even if there be any room for interpretation of this section by the government, its own regulations plainly state that each of the purposes listed in § 501 (c) (3) "is an exempt purpose in itself." Treas. Regs. 1.501 (c) (3)—1 (d) (1). Surely the government is as bound by its own regulations as the University. *Petroleum Heat & Power Co., Inc. v. U. S.,* 405 F. (2d) 1300 (Ct. Cl., 1969).

If the Congress had intended to prohibit the tax exempt status for organizations which are otherwise religious, or educational, or charitable, but which practice racially discriminatory admissions policies, it would have so provided. It has not chosen to do so. Instead, it has repeatedly reenacted § 501 (c) (3) in substantially the same language as it now appears in its present form. The fact that Congress has chosen not to change the law indicates Congressional approval of the interpretation of § 501 (c) (3), contended for by the University and up until recently implemented by the government. *United States v. Correll,* 389 U. S. 299, *Cammarano v. United States,* 358 U. S. 498, *Helvering v. R. J. Reynolds Tobacco Co.,* 306 U. S. 110, *United States v. 525 Company,* 342 F. (2d) 759 (5 Cir., 1965). Against the repeated reenactment of this section by Congress and the Treasury's prior longstanding and consistent

administrative interpretation of it, the present action threatened by the government cannot be allowed. To allow treasury officials to revoke the tax exempt status of Bob Jones University would be to sanction an act which exceeds their authority under the law.

C. Is the threatened revocation of the University's tax exempt status in violation of the First Amendment to the Constitution in that it would deprive the University of its right to the free exercise of its religious beliefs and would promote, benefit and establish religion?

The First Amendment specifically applies to the rights of the University and its students to express their own educational religious theories and beliefs. In *Griswold v. Connecticut,* 381 U. S. 479, the Court held that such constitutional protection extended to

> . . . the liberty of parents and guardians to direct the upbringing and education of children under their control. (381 U. S. p. 495.)
>
> The right to educate a child in a school of the parents' choice—whether public or private or parochial—. . . to study any particular subject or any foreign language . . . to express one's attitudes or philosophies . . . (381 U. S. pp. 482-83.)

In this regard the Court followed its earlier holding in *Pierce v. Hill Military Academy,* 268 U. S. 510:

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power to the state to standardize its children by forcing them to accept instruction from public teachers only.

Justice Brennan, concurring in *School Dist. of Abingdon v. Schempp,* 374 U. S. 203, said:

> Attendance at public schools has never been compulsory; parents remain morally and constitutionally

free to choose the academic environment in which they wish their children to be educated.

> The choice which is thus preserved is between a public secular education with its uniquely democratic values, and some form of private or sectarian education, which offers values of its own. In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative—either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures. The choice between these very different forms of education is one—very much like the choice of whether or not to worship—which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election. The lesson of history—drawn more from the experience of other countries than from our own—is that a system of free public education forfeits its unique contribution to the growth of democratic citizenship when that choice ceases to be freely available to each parent. (p. 1582.)

And, as noted in *U. S. v. Williams,* 341 U. S. 70,

> . . . it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters . . . *NAACP v. Ala.,* 357 U. S. 449 at 460 (1958).

First Amendment rights are protected even though their purpose is the peaceful advocacy of anti-constitutional or even illegal ends, *Elfbrandt v. Russell,* 384 U. S. 11. Thus, rights of communists must be protected even by compelling the employment of conceded communists in defense security positions, *U. S. v. Robel,* 389 U. S. 258, or on federally subsidized shipping, *Schneider v. Smith,* 390 U. S. 17. First Amendment rights must be protected although it favors a political dictatorship, *Schneiderman v. U. S.,* 320

U. S. 118, or the establishment of a Nazi state, *U. S. v. Korner,* 56 F. Supp. 242 or is intended to oppose national policy or law, *Bond v. Floyd,* 385 U. S. 116. Such freedom may not be discouraged whether it be ultra-conservative or ultra-liberal, *Liberty Lobby, Inc. v. Pearson,* 390 F. (2d) 489. There, Mr. Chief Justice Burger took occasion to say:

> . . . programs of "political education" some of which contain overtones of anti-semitism and racism . . . however reprehensible, are within the areas covered by the First Amendment. *Liberty Lobby, Inc. v. Pearson,* 390 F. (2d) 489 (D. C. Cir. 1968).

Or, as expressed in one of the famous dissents of Justice Holmes, since become the doctrine of the Court,

> If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate. *U. S. v. Schwimmer,* 279 U. S. 644.

In *W. Va. State Bd. of Ed. v. Barnette,* 319 U. S. 624, the rationale for this principle was fully discussed:

> We there struck down a condition which limited the availability of a tax exemption to those members of the exempted class who affirmed their loyalty to the state government granting the exemption. While the State was surely under no obligation to afford such an exemption, we held that the imposition of such a condition upon even a gratuitous benefit inevitably deterred or discouraged the exercise of First Amendment rights of expression and thereby threatened to "produce a result which the State could not command directly." 357 U. S. at 526. "To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech." *Id.,* 357 U. S. at 518.
>
> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can

> prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by work or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

First Amendment rights are equally applicable to the support of racial objectives, even though otherwise illegal action is involved, *NAACP v. Ala.,* 357 U. S. 449, or where the doctrine advocated is one of racial supremacy, *Cooper v. Pate,* 382 F. (2d) 518. In *Evans v. Newton,* 382 U. S. 296, the Court said:

> If a testator wanted to leave a school or center for the use of one race only and in no way implicated the State in the supervision, control, or management of that facility, we assume *arguendo* that no constitutional difficulty would be encountered.

"The power to tax the exercise of a privilege is the power to control or suppress its enjoyment." *Magnano Co. v. Hamilton,* 292 U. S. 40, 44-45. Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. . . ." *Murdock v. Pennsylvania,* 319 U. S. 105, 112.

In the *Murdock* case, this Court held a tax levied upon a missionary evangelist to be unconstitutional under the First Amendment. Similarly in *Follett v. Town of McCormick,* 321 U. S. 573, the Court held unconstitutional an ordinance providing for a business license for anyone selling books within the corporate limits of the Town of McCormick, South Carolina, as applied to a Jehovah's Witness who went from house to house selling books. The Court concluded that the ordinance sought to impose a tax on the exercise of a privilege granted by the Bill of Rights and was therefore an unconstitutional exaction. In its concluding sentence, the Court stated that one cannot be required

to "pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." 321 U. S. p. 578.

The University receives no federal tax benefits by reason of its exempt status, for if it did, it, as well as all exempt religious organizations, would be involved in impermissible federal entanglement with religion.[22] The government would ignore the "benevolent neutrality" doctrine of *Walz v. Tax Commission,* 397 U. S. 664. Furthermore, to state that no tax is imposed as a condition to inherent religious activity in the case is absurd. Uncontroverted evidence (A., 43-44) demonstrates the cost of taxes to the University to continue exercising its religious beliefs will exceed half a million dollars a year if the government has its way.

This Court has held that the First Amendment is in effect a two-edged sword barring the state from establishing or forcing a particular religious perspective upon a citizen and as well providing that the state cannot "hamper" *Everson v. Board of Education,* 330 U. S. 1, "handicap" *Abingdon v. Schempp,* 374 U. S. 203, or "inhibit" *Board of Education v. Allen,* 392 U. S. 236, a citizen in the free and legitimate exercise of his religion.

The United States Supreme Court in *Committee for Public Education and Religious Liberty v. Nyquist,* —— U. S. ——, 93 S. Ct. 2955 (1973), reviewed previous Court decisions dealing with the impact of the establishment clause upon various schemes which face constitutional problems in the area of sectarian education.

> Taken together these decisions dictate that to pass muster under the establishment clause, the law in question first must reflect a clearly secular legislative purpose, *e. g., Epperson v. Arkansas,* 393 U. S. 97, 89

[22] *Committee for Public Education and Religious Liberty v. Nyquist,* —— U. S. ——, 93 S. Ct. 2944.

S. Ct. 266, 21 L. Ed. (2d) 228 (1968), second, must have a primary effect that neither advances nor inhibits religion, *e. g., McGowan v. Maryland, supra; School District of Abington Tnp. v. Schempp,* 374 U. S. 203, 83 S. Ct. 1560, 10 L. Ed. (2d) 844 (1963), and third, must avoid excessive government entanglement with religion, *e. g., Walz v. Tax Commission, supra.*

Applying these three criteria to the situation here indicates that exempt status for the University does pass muster under the establishment clause. Tax exempt status for religious and educational institutions is practically universal. The Congress and numerous state legislatures have been motivated by a clearly secular purpose. Religion and education have historically been considered of overall benefit to the community.[23] A plurality of divergent religions have contributed greatly to the development of this country. Second, the primary effect of tax exemptions neither advances nor inhibits religion.[24] The huge class of organizations entitled to exempt status encompasses educational and religious organizations of every stripe. Atheists and Black Muslims as well as Bob Jones University are entitled to exemption. No religion is favored and none hindered. Third, the granting of exempt status does not involve excessive government entanglement with religion. The government simply declines to tax or interfere with such organization; it exercises "benevolent neutrality." On the other hand the course set by Treasury Officials in the instant case would lead to the very type of entanglement condemned in *Nyquist* and *Walz*. The government here seeks to control religious beliefs and practices selected by it. It seeks to inquire into and police their practices all contrary to the spirit of the establishment as well as the free exercise clause of the First Amendment. This is particularly true in

[23] See *Russell v. Allen, supra; Commissioner for Special Purposes of Income Tax v. Pemsel, supra.*

[24] *Walz v. Tax Commission, supra.*

the case of the University where such entanglement involves not only routine administrative policies but goes to the very heart of the University's existence and to the core of its religious principles.

In *Sherbert v. Verner,* 374 U. S. 398, Sherbert was denied unemployment compensation benefits because of her refusal to work on Saturdays. The South Carolina Supreme Court had upheld the denial of benefits, saying that such place no restriction upon her freedom of religion. This Court reversed and in so doing held:

> The ruling forces her to choose between following the precepts of her religion and forfeiting benefits on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship. (374 U. S. p. 404.)
>
> It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege. (374 U. S. p. 404.)
>
> In *Speiser v. Randall,* 357 U. S. 513, we emphasized that conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms. We there struck down a condition which limited the availability of a tax exemption to those members of the exempted class who affirmed their loyalty to the state government granting the exemption. (374 U. S. p. 405.)

The threat by Treasury Officials to revoke the tax exempt status of the University constitutes an attempt to impose a penalty upon a religious organization. The threat has arisen because of the University's restricted admissions policy which was formulated when the University was

founded. The policy is dictated by the religious beliefs of the University that the Holy Scriptures forbid the intermarriage of the races. Thus, only one conclusion can be drawn, i. e., the penalty threatened to be imposed is to be imposed because of the University's religious beliefs.

The University has chosen the field of education as its vehicle for the spread and teachings of its religious beliefs and philosophies. There is no distinction between the threat to the University's pursuit of its religious activities and the tax struck down in *Murdock, supra,* or in *Follett, supra.* Nor is there any distinction between the University's refusal to surrender its deeply-rooted religious beliefs and the unconstitutional restriction sought to be imposed upon Mrs. Sherbert by denying her unemployment compensation benefits because of her refusal to work on Saturdays, which refusal was prompted by her religious beliefs.

This court had occasion to examine the relationship between tax exemptions and First Amendment rights in *First Unitarian Church v. County of Los Angeles,* 357 U. S. 545, a companion case to *Speiser v. Randall,* 357 U. S. 513. In these cases the State of California had refused to grant tax exempt status to veterans who refused to sign loyalty oaths. In *First Unitarian Church,* Mr. Justice Douglas, with Mr. Justice Black concurring, stated:

> What I have said in *Speiser v. Randall* and *Prince v. City and County of San Francisco,* 357 U. S. 513, is sufficient for these cases as well. But there is a related ground on which the decision in these Unitarian cases should rest. We know from the record one principle of that church: "The principles, moral and religious, of the First Unitarian Church of Los Angeles compel it, its members, officers and minister, as a matter of deepest conscience, belief and conviction, to deny power in the state to compel acceptance by it or any other church

of this or any other oath of coerced affirmation as to church doctrine, advocacy or beliefs."

• • •

There is no power in our Government to make one bend his religious scruples to the requirements of this tax law.

Here the government is attempting to exercise alleged power to make the University bend its religious scruples to the requirements of the tax law. There is no such power in our government.

In a second companion case to *Speiser, First Unitarian Church v. County of Los Angeles,* 357 U. S. 513, Mr. Justice Black stated:

California, in effect, has imposed a tax on belief and expression. In my view, a levy of this nature is wholly out of place in this country; so far as I know such a thing has never even been attempted before. I believe that it constitutes a palpable violation of the First Amendment, which of course is applicable in all its particulars to the States. [citing cases] The mere fact that California attempts to exact this ill-concealed penalty from individuals and churches and that its validity has to be considered in this Court only emphasizes how dangerously far we have department from the fundamental principles of freedom declared in the First Amendment. We should never forget that the freedoms secured by that Amendment—Speech, Press, Religion, Petition and Assembly—are absolutely indispensible for the preservation of a free society in which government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities [citing cases.]

• • •

I am convinced that this whole business of penalizing people because of their views and expressions concerning government is hopelessly repugnant to the

principles of freedom upon which this Nation was founded and which have helped to make it the greatest in the world. As stated in prior cases, I believe "that the First Amendment grants an absolute right to believe in any governmental system, [to] discuss all governmental affairs and [to] argue for desired changes in the existing order. This freedom is too dangerous for bad, tyrannical governments to permit. But those who wrote and adopted our First Amendment weighed those dangers against the dangers of censorship and deliberately chose the First Amendment's unequivocal command that freedom of assembly, petition, speech and press shall not be abridged. I happen to believe this was a wise choice and that our free way of life enlists such respect and love that our Nation cannot be imperiled by mere talk." . . .

The granting of tax exemptions to religious organizations has been thoroughly treated in Walz.[25] There an attack was launched upon the New York statute granting property tax exemption to religious organizations for religious properties used solely for religious worship. The constitutional basis for the attack was that the grant of an exemption constituted sufficient government support for religion to violate the First Amendment establishment clause. Recognizing that the First Amendment does not deal in absolute terms, Mr. Chief Justice Burger stated:

> The course of constitutional neutrality in this area cannot be an absolutely straight line; rigidity could well defeat the basic purpose of these provisions, which is to insure that no religion be sponsored or favored, none commanded, and none inhibited. The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or

[25] See: *Constitutional Law: Tax Exemption and Religious Freedom*, 54 Marquette Law Rev. 385.

governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference. 397 U. S., p. 669.

* * *

The legislative purpose of a property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility. 397 U. S., p. 672.

The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state. No one has ever suggested that tax exemption has converted libraries, art galleries, or hospitals into arms of the state or put employees "on the public payroll." There is no genuine nexus between tax exemption and establishment of religion. . . The exemption creates only a minimal and remote involvement between church and state and far less than taxation of churches. It restricts the fiscal relationship between church and state, and tends to complement and reinforce the desired separation insulating each from the other. 397 U. S., pp. 675, 676.

Separation in this context cannot mean absence of all contact; the complexities of modern life inevitably produce some contact and the fire and police protection received by houses of religious worship are no more than incidental benefits accorded all persons or institutions within a State's boundaries, along with many other exempt organizations. 397 U. S., p. 676.

For so long as federal income taxes have had any potential impact on churches—religious organizations have been expressly exempt from the tax. Such treatment is an "aid" to churches no more and no less in principle than the real estate tax exemption granted by States. Few concepts are more deeply embedded in the fabric of our national life, beginning with pre-Revolutionary colonial times, than for the government to ex-

> ercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference. 397 U. S., pp. 676, 677.

* * *

In the instant case, it is significant that the purpose of Bob Jones University as a religious and educational institution has remained steadfastly the same and has, for more than 40 years, been accorded tax exempt status.

Returning to the *Walz* decision, Mr. Justice Brennan, concurring, stated:

> [G]overnment grants exemptions to religious organizations because they uniquely contribute to the pluralism of American society by their religious activities. Government may properly include religious institutions among the variety of private, nonprofit groups that receive tax exemptions, for each group contributes to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society. 397 U. S., p. 689.

The concurring opinion of Mr. Justice Harlan states:

> I think, moreover, in the context of a statute so broad as the one before us, churches may properly receive an exemption even though they do not themselves sponsor the secular-type activities mentioned in the statutes but exist merely for the convenience of their interested members. As long as the breadth of exemption includes groups that pursue cultural, moral or spiritual improvements in multifarious secular ways, including, I would suppose, groups whose avowed tenets may be antitheological, atheistic, or agnostic, I can see no lack of neutrality in extending the benefit of the exemption to organized religious groups. 397 U. S., 697.
>
> In the instant case noninvolvement is further assured by the neutrality and breadth of the exemption. In the context of an exemption so sweeping as the one before us here its administration need not entangle

government in difficult classifications of what is or is not religious, for any organization—although not religious in a customary sense—would qualify under the pervasive rubric of a group dedicated to the moral and cultural improvement of men. Obviously the more discriminating and complicated the basis of classification for an exemption—even a neutral one—the greater the potential for state involvement in evaluating the character of the organizations. *Cf. Presbyterian Church in United States v. Mary Eliz. Blue Hall Memorial Presbyterian Church*, 393 U. S. 440, 89 S. Ct. 601, 21 L. Ed. 658 (1969). 397 U. S. pp. 698, 699.

This Court has recently delivered its opinion in the case of *Wisconsin v. Yoder*, 406 U. S. 205. While that opinion did not directly involve taxes, the matter presently before the Court does not in reality pertain to taxes either. The *Yoder* decision did involve a conflict between a firmly fixed public policy issue and the free exercise provisions of the First Amendment. In *Yoder*, the State of Wisconsin had successfully prosecuted parents of Amish children because of their violation of the compulsory school attendance law. The criminal prosecutions were defended by the Amish upon the grounds that their children's attendance at high school was contrary to the Amish religion and way of life. The Court recognized the power of the state to impose reasonable regulations for the control and duration of basic education, stating: "providing public schools ranks at the very apex of the function of a state." 406 U. S. p. 213. Thus, there was no question but that the very clearly pronounced public policy of the State of Wisconsin required compulsory high school education. Mr. Chief Justice Burger stated that the

> ". . . State's interests in universal education, however high we rank it, is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those specifically protected by

the Free Exercise Clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children. . . ." 406 U. S. p. 214.

The Yoder opinion is analogous and demonstrates the right of the University and its students to freely exercise their religious beliefs notwithstanding the claimed public policy requiring a racially nondiscriminatory admissions policy.

> It follows that in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. Long before there was general acknowledgement of the need for universal formal education, the Religion Clauses had specifically and firmly fixed the right to free exercise of religious beliefs, and buttressing this fundamental right was an equally firm, even if less explicit, prohibition against the establishment of any religion by government. The values underlying these two provisions relating to religion have been zealously protected, sometimes even at the expense of other interests of admittedly high social importance. 406 U. S. p. 214.
>
> The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. 406 U. S. p. 215.
>
> • • •
>
> The impact of the compulsory attendance law on respondents' practice of the Amish religion is not only severe, but inescapable. . . . It carries with it precisely the kind of objective danger to the free exercise of religion which the First Amendment was de-

signed to prevent. As the record shows, compulsory school attendance to age 16 for Amish children carries with it a very real threat to undermining the Amish community and religious practice as it exists today; they must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region. 406 U. S. p. 218.

In sum, the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life support the claim that enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondents' religious beliefs. 406 U. S. p. 219.

The similarity between the just-quoted language and the situation confronting Bob Jones University is striking. To paraphrase, it can just as easily be said of the matter at bar that:

The impact of the revocation of the University's tax exempt status on the University and its students is not only severe, but inescapable. . .

It carries with it precisely the kind of objective danger to the free exercise of religion which the First Amendment was designed to prevent. As the record shows, the threatened revocation carries with it a very real threat to undermining the continued existence of the University and its religious practices of teaching and promulgating its fundamentalistic religious beliefs through the field of education; the University must either abandon its religious beliefs and teachings and be assimilated into society at large by adopting a nondiscriminatory admissions policy, or be forced to migrate to some other and more tolerant region.

In sum, the unchallenged record, in excess of 40 years of consistent practice, and strong evidence of a sustained faith pervading and regulating the University and its students' entire mode of life (and its finan-

cial lifeblood) support the claim that enforcement of the Treasury Department's requirement of a nondiscriminatory admissions policy would gravely endanger if not destroy the free exercise of the University's religious beliefs.

Returning now to the *Yoder* opinion, Chief Justice Burger went on to say:

> Wisconsin concedes that under the Religious Clauses, religious beliefs are absolutely free from the State's control, but it argues that "actions," even though religiously grounded, are outside the protection of the First Amendment. But our decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers. See, *e. g., Gillette v. United States,* 401 U. S. 437 (1971); *Braunfeld v. Brown,* 366 U. S. 599 (1961); *Prince v. Massachusetts,* 321 U. S. 158 (1944); *Reynolds v. United States,* 98 U. S. 145 (1878). But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability. *E. g., Sherbert v. Verner,* 374 U. S. 398 (1963); *Murdock v. Pennsylvania,* 319 U. S. 105 (1943); *Cantwell v. Connecticut,* 310 U. S. 296, 303-304 (1940). This case, therefore, does not become easier because respondents were convicted for their "actions" in refusing to send their children to the public high school; in this context belief and action cannot be neatly confined in logic-tight compartments. Cf. *Lemon v. Kurtzman,* 403 U. S. 602, 612 (1971).

Nor can this case be disposed of on the grounds that Wisconsin's requirement for school attendance to age 16 applies uniformly to all citizens of the State and does not, on its face, discriminate against religions or a particular religion, or that it is motivated by legitimate secular concerns. A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion. *Sherbert v. Verner; cf. Walz v. Tax Com.*, 397 U. S. 664 (1970). The Court must not ignore the danger that an exception from a general obligation of citizenship on religious grounds may run afoul of the Establishment Clause but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise. By preserving doctrinal flexibility and recognizing the need for a sensible and realistic application of the Religion Clauses.

> "We have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope' and one we have successfully traversed." *Walz v. Tax Commission*, 397 U. S. at 672.

406 U. S. pp. 219-221.

In short, the threatened action against the University violates its constitutional right to the free exercise of its religious beliefs as contained in the First Amendment.

In the case of *Moose Lodge No. 107 v. Irvis*, 407 U. S. 163 this Court reversed the decision of a three-judge district court, which had held that granting a liquor license, with attendent state supervision, to a private club constituted sufficient state involvement in the operation of the club so as to prohibit racially discriminatory admissions practices. This Court found no constitutional prohibition against the Moose Lodge's discriminatory membership and

guest regulations and insufficient "state action". Recognizing the necessity of some involvement between the State and private entities, the Court clearly recognized that all involvements do not constitute state involvement in constitutionally prohibited conduct.

> The Court has never held, of course, that discrimination by an otherwise private entity would be violative of the equal protection clause if the private entity receives any sort of benefit or service at all from the State, or if it is subject to State regulation in any degree whatever. Since the State-furnished services include such necessities of life as electricity, water, and police and fire protection, such a holding would utterly emasculate the distinction between private as distinguished from State conduct set forth in the *Civil Rights Cases, supra,* and adhered to in subsequent decisions." 407 U. S. p. 173.

It is apparent that in the instant case there would be far more federal involvement in the operation of the University than at present if the University were subject to taxation. Tax exempt status is as much a necessity for religious and educational institutions, such as the University, as fire and police protection for the Moose Lodge.[26]

Furthermore, if tax exempt status constitutes a federal benefit, it "would utterly emasculate the distinction between private as distinguished from State conduct" as far as all tax exempt organizations are concerned. Such a ruling carried to its logical conclusion would deny tax exempt status to all religious organizations.

In *Moose Lodge,* this Court pointed out that the scrutinized Pennsylvania statutes did not encourage discrimination.[27]

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[26] Current newspapers and periodicals are filled with stories of the financial woes of private schools and colleges operating with tax exempt status.

[27] An exception was noted which is not pertinent here.

> There is no suggestion in this record that the Pennsylvania statutes and regulations governing the sale of liquor are intended either overtly or covertly to encourage discrimination. 407 U. S. p. 163.

Similarly, by granting tax exempt status to educational institutions, including religious schools such as the University, the Internal Revenue Service does not encourage discrimination. Even-handed granting of tax exempt status simply allows religious institutions to practice their religious beliefs whether or not discrimination is involved. On the other hand, the course elected by the government produces a discriminatory and chilling effect upon First Amendment rights.

D. Is the threatened revocation of the University's tax exempt status in violation of the Fifth Amendment to the Constitution in that it would deny the University due process and equal protection of the law?

The threatened revocation of the University's tax exempt status is not only unconstitutional inhibition of its religious beliefs and practices but is also discriminatory, and thus denies the University the equal protection of the laws. The Equal Protection provisions of the Fourteenth Amendment are applicable to the federal government through Due Process clause of the Fifth Amendment. *Bolling v. Sharpe,* 347 U. S. 497.

The University is denied equal protection, as the threatened action favors those religious organizations which will continue to enjoy tax exempt status where their particular religious beliefs allow adoption of a racially nondiscriminatory admissions policy. This unconstitutional discrimination can be easily seen if one imagines two religious schools identical in purpose and administration but for one difference, *i.e.,* the first has religious beliefs which require the separation of the races and thus a racially dis-

criminatory admissions policy, while the second does not. To tax the first and exempt the second, requires the federal government to choose between these two religions and favor one, which favoritism is constitutionally forbidden.

Such uneven treatment of religions involves serious establishment questions attendant to those involving due process and equal protection. The mere fact that government actions tend to cross the establishment line in selected religions necessarily creates equal protection problem. Conversely a denial of equal protection among religions necessarily gives rise to establishment questions.

This Court has consistently struggled to find a neutral course between the two religion clauses contained in the First Amendment. Thus, the opinions of the Supreme Court have developed the "benevolent neutrality" doctrine, *Walz, supra.* Because of the possible conflict between the two religion clauses, and in furtherance of the doctrine of benevolent neutrality, the Supreme Court has held that a grant by the federal or state government of a tax exemption violates neither of the religion clauses, *i. e.,* it does not constitute the establishment of a religion, nor does it interfere with religious freedoms. Historically, proper constitutional construction and proper legislative actions have demanded tax exemption for religious organizations so that they should not be inhibited in their activities by taxation.

Analogy can be drawn from the Court's decisions in the "Bible reading" cases. *Abingdon v. Schempp, supra.* There, the Court again encountered the tension in its construction of the "establishment" and "freedom" clauses. The Court said:

> . . . a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose

his own course with reference thereto, free of any compulsion by the state. 374 U. S. p. 222.

Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a Free Exercise case for one to show the coercive effect of the enactment as it operated against him in the practice of his religion. 374 U. S. p. 223.

We agree of course that the state may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus prefessing those who believe in no religion over those who do believe. 374 U. S. p. 225.

Mr. Justice Brennan, in concurring with the judgment of the Court in *Schempp* as to meaning of the protection of religion against state action said:

The choice which is thus preserved (by the First Amendment) is between a public secular education with its uniquely democratic values and some form of private sectarian education, which offers values of its own. In my judgment the First Amendment forbids the State to inhibit that freedom of choice of diminishing the attractiveness of either alternative—either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardising the freedom of the public schools from private or sectarian pressure. 374 U. S. p. 242.

Further analogy can be drawn from *Board of Education v. Allen, supra,* which involved a New York statute requiring local school districts to purchase and lend school books to the parochial school students as well as those in public school. The court sustained the constitutionality of the statute by finding that religion and secular education were not so intertwined as to demand a finding that the provision of textbooks on secular matters by the state amounted to an establishment of religion.

The first aspect of *Allen* that is material to the case for public support for private religious schools is the holding that the state, which cannot establish a religion cannot inhibit religion. Referring to the series of cases already discussed, the Court said in *Allen*:

> The case of *Abingdon v. Schempp* . . . fashioned a text subscribed to by eight Justices for distinguishing between forbidden involvements of the State with religion and those contracts which the Establishment Clause permits.
>
> The test may be stated as follows: What are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative powers as circumscribed by the Constitution. That is to say to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.

Emerson v. Board of Education. 392 U. S. p. 243.

Here the appellants would not only destroy the balance sought between secular and sectarian education but would create imbalance and governmental discrimination within sectarian education itself. Such is clearly unconstitutional.

CONCLUSION

Jurisdictional limitations should not be applied to exempt organizations where irreparable harm automatically results. The Anti-Injunction Statute as applied by the Court of Appeals raises substantial question as to the propriety of its use as well as its constitutionality. The *Williams Packing* test should be construed or enlarged so as to permit meaningful judicial relief for threatened exempt organizations.

The University has raised significant statutory and constitutional issues which require reversal of the Court

of Appeals. Its well established, long standing beliefs and practices are entitled to constitutional protection. The statutory scheme providing for exemption commands exemption for the University.

"There is little doubt that 'the power to tax involves the power to destroy.' Since private schools . . . cannot be destroyed directly, they should not be eliminated indirectly. If integrated education is as desirable as most people believe, its advantages will become self evident and schools presently practicing racial discrimination will cast aside their prejudicial policies of their own volition. Until such time, however, the constitutional right of these institutions to exist must be protected. Confidence in the American system and toleration of differing points of view command such a course."[28]

By continuing to recognize the University as exempt from federal taxes, the government does nothing to perpetuate the University and its religious beliefs and practices. The future of the University is predicated upon continuing support from its contributors and continuing attendance by its students. Even with its tax exempt status intact, it cannot survive unless, in the free marketplace of ideas, it is able to attract support. It should not be crippled in its attempt to survive. It should have the same opportunity to compete for contributions and students as do all other religious schools.

For the reasons stated, it is respectfully submitted that the decision of the Court of Appeals should be reversed and

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[28] *Charitable Deductions, Tax Exemption and Segregated Institutions*, 23 Syracuse L. Rev. 1189, 1210. Footnotes omitted.

the case remanded for entry of a permanent injunction enjoining revocation of the University's tax exempt status.

RESPECTFULLY SUBMITTED.

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